

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES SECURITIES AND	:	
EXCHANGE COMMISSION,	:	
Plaintiff,	:	
	:	19 Civ. 4355 (LGS)(GWG)
v.	:	
	:	<u>ORDER</u>
MYKALAI KONTILAI, COLLECTOR'S	:	
COFFEE, INC., et al.	:	
Defendants	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, on May 16, 2019, the Court issued a temporary restraining order (the “Temporary Restraining Order”), which froze “[t]he assets, funds, or other property held by or under the direct or indirect control of Defendants Collectors Café or Mykalai Kontilai, whether held in any of their names or for their direct or indirect beneficial interests, wherever located, up to the amount of \$46,121,649.68.” Dkt. No. 12.

WHEREAS, on June 28, 2019, pursuant to 28 U.S.C. § 636(c)(1), the parties signed a Notice, Consent, and Reference of a Dispositive Motion to a Magistrate Judge, referring to Judge Gorenstein for a final order, “Plaintiff’s motion for an asset freeze, and other relief, including a preliminary injunction (Docket #8 et seq.) and (2) Defendant’s motion for relief from the Court’s May 14, 2019, Order (Docket #40).” Dkt. No. 59.

WHEREAS, on November 12, 2019, Plaintiff filed a renewed motion for preliminary injunction (the “Motion for Preliminary Injunction”). Dkt. No. 141.

WHEREAS, on November 13, 2019, pursuant to 28 U.S.C. § 636(c)(1), the parties signed a Notice, Consent, and Reference of a Dispositive Motion to a Magistrate Judge, referring to Judge Gorenstein for a final order, “Plaintiff’s Motion for Preliminary Injunction (Doc. No. 8, et seq.).” Dkt. No. 143.

WHEREAS, on December 9, 2019, the Court issued a Stipulated Order on Renewed Motion for Preliminary Injunction (the “Stipulation”), signed by the parties and stipulating to the relief sought in the Motion for Preliminary Injunction pending a hearing on the motion. Dkt. No. 175. As a result, Judge Gorenstein never ruled on the merits of Plaintiff’s Motion for Preliminary Injunction.

WHEREAS, on November 1, 2020, Defendant Mykalai Kontilai filed a pre-motion letter seeking (i) clarification as to whether the Temporary Restraining Order “prevent[s] Kontilai from using any untainted funds earned or received and/or using untainted funds for hiring criminal defense and extradition counsel and criminal defense experts of his choice,” (Dkt. No. 612, 1/4) and (ii) dissolution of the Temporary Restraining Order. Dkt. No. 612

WHEREAS, Defendant Mykalai Kontilai’s request for the dissolution of the Temporary Restraining Order is based on challenges to the merits of Plaintiff’s Motion for Preliminary Injunction. *See* Dkt. No. 612.

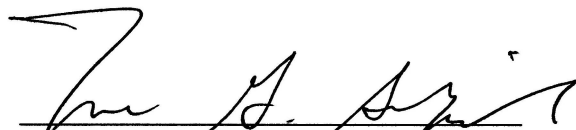
WHEREAS, on November 3, 2020, Defendant Veronica Kontilai joined in the November 1, 2020, pre-motion letter at Docket No. 612. Dkt. No. 613. It is hereby

ORDERED that, by **November 12, 2020**, the parties shall meet and confer to attempt to resolve any issues regarding Defendants’ use of certain funds for hiring criminal defense and extradition counsel and criminal defense experts of his choice, and based on the results of the parties’ meet and confer, either (i) the parties shall file a stipulation regarding the scope of the Temporary Restraining Order or (ii) Plaintiff shall file a responsive letter to the request for clarification in the pre-motion letter at Docket No. 612. It is further

ORDERED that, any requests regarding dissolution of the Temporary Restraining Order, which in substance, involve consideration of the merits of the Motion for Preliminary Injunction,

are referred to Judge Gorenstein pursuant to Docket Nos. 59 and 143 for a final order. The parties have provided their consent for Judge Gorenstein to issue a final order on Plaintiff's Motion for Preliminary Injunction (*see* Dkt. Nos. 59 and 143). Defendants now, as support for the contention that the TRO should be dissolved, assert that "[t]he SEC [h]as [n]ot [c]ome [c]lose to [m]eeting its [b]urden to [o]btain a [p]reliminary [i]njunction," and, as a result, are requesting that the Court consider the merits of a motion referred to Judge Gorenstein. Defendants' request for dissolution of the TRO is therefore referred to Judge Gorenstein.

Dated: November 6, 2020
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE